

State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Jim Doyle, Governor
Matthew J. Frank, Secretary
Ronald W. Kazmierczak, Regional Director

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November 19, 2009

ANDY DUMKE
ALLIANCE DEVELOPMENT
230 OHIO STREET SUITE 200
OSHKOSH WI 54902

BRRTS # 07-71-379315

SUBJECT: Clarification of Environmental Liability and Present Environmental Status of the
Marion-Pearl Redevelopment Area – Parcel H, Oshkosh
WDNR VPLE BRRTS ID # 06-71-525333
Parcels #s: 90102000000
Lots 1, 2, & 3 of Certified Survey Map #5840

Dear Mr. Dumke:

Purpose

The purpose of this letter is to respond to your request for information, dated October 26, 2009, regarding clarification of liability based on the current environmental conditions at Parcel H, Jackson St & Pearl Avenue, City of Oshkosh, hereafter referred to as "the Property." The Property is currently owned by the Redevelopment Authority of the City of Oshkosh who has entered it in Wisconsin's Voluntary Party Liability Exemption (VPLE) process. For your information, Fact Sheet #2 (PUB-RR506) describing the VPLE process has been included with this letter.

The Property encompasses several former properties that included a railroad, gas stations, manufacturing buildings, and commercial offices. The Property is identified as Lot #1, 2, & 3 as indicated on the attached Certified Survey Map (CSM) # 5840. It is located in the City of Oshkosh, in SE ¼ of NE ¼ of NE ¼ of SE ¼ Section 23, T18N, R16E in the City of Oshkosh, Winnebago County, Wisconsin. The Property is approximately 6 acres, and is bounded on the north by Pearl Avenue and on the east by Jackson Street. To the west is Riverway Drive. The area is identified as Parcel H in the Marion Road – Pearl Street Redevelopment Area which contains several other parcels that are in various stages of redevelopment by the City.

Request

You have requested via an email application dated October 26, 2009, that the Department of Natural Resources, hereafter referred to as "the Department", issue a general liability clarification letter. It is the Department's understanding that Alliance Development is currently leasing the Property and plans to purchase the Property from the City upon redevelopment. You have also asked a specific question which will be addressed later in this letter.

The appropriate fee for providing such assistance, as required in s. NR 749.04(1), Wis. Adm. Code, is waived and at the City's request on your behalf, the City of Oshkosh's current Voluntary Party Liability Exemption Account will be charged for responding to your request for this liability clarification letter.

In order for the Department to make this determination, the following documents were reviewed:

- Environmental Site Assessment and Asbestos Survey, Former Hildebrandt Property, July 10, 2001
- Site Assessment Grant Phase II – Subsurface Assessment Report, Former Hildebrandt Property, March 4, 2003
- Site Investigation Report, Former Hildebrandt Property, March 6, 2003
- Department of Commerce Closure Letter dated September 1, 2004 for Former Hildebrandt Property
- Phase I Environmental Site Assessment, former Wisconsin Automated Machinery, June 12, 2002
- Subsurface Assessment, former Wisconsin Automated Machinery, October 21, 2003
- WDNR July 22, 2004 review comments memo regarding Phase I former Wisconsin Automated Machinery
- Site Investigation Workplan for Anhaltzer Trust, December 9, 2002
- WDNR email approval, December 20, 2002
- Site Assessment Grant Phase II Subsurface Assessment Report, Former Anhaltzer Trust, October 15, 2003
- Case Closure Request for Former Anhaltzer Trust, June 20, 2005
- WDNR Closure letter, July 27, 2005
- Case Closure Request for Former Zion Eldercare, April 27, 2005
- WDNR Closure letter, June 30, 2005
- Phase II Subsurface Assessment, Former Zion Eldercare, April 12, 2007
- WDNR July 22, 2004 review comments regarding former properties on Parcel H
- Marion Pearl Redevelopment Area Sampling and Analysis Plan and VPLE Response, April 9, 2007
- WDNR May 2, 2007 review comments
- Revised Sampling and Analysis Plan and VPLE Response, June 26, 2007
- WDNR email June 27, 2007 approval to proceed
- Analysis of Brownfield Cleanup Alternatives, Parcel H, September 30, 2009
- WDNR approval letter for remedial plans, October 8, 2009

The reports were prepared for the City of Oshkosh – Parcel H Property within the Marion-Pearl Redevelopment Area. The current attached CSM #5840 prepared by Registered Land Surveyor Craig Hansen and dated September 20, 2009, incorporates both the Parcel H Property and also Parcel I (former Zion Eldercare property). The Department has reviewed the aforementioned reports and provides the following summary and opinions concerning the Property.

Summary of Environmental Conditions

The property is currently under redevelopment construction of the following buildings:

- Accu-Com, 90 Riverway Drive (Lot 1)
- Mixed use mini-mall, 135 Jackson Street (Lot 2)
- Morton Pharmacy, 155 Jackson Street (Lot 3)

Investigation and remediation work is continuing during this construction phase. Redevelopment of the property is an integral part of the future site closure as capping of the site will be a requirement for protection of groundwater and direct contact concerns. The site history includes gas stations, manufacturing, foundry sand fill, waste fill, and commercial properties.

The Phase I ESA's revealed several recognized environmental conditions (REC) in connection with the Property. The major RECs are as follows:

1. Fill soils known to be present in this entire area of Oshkosh including sawdust, woodchips, foundry sand, bricks, and metal.

2. Petroleum impacts from the former Hildebrandt Property (BRRTS #03-71-194787), the Anhaltzer Trust (BRRTS #03-71-363428), and Triangle Tavern (BRRTS #03-71-281524).
3. Various petroleum and metals impacts from former Wisconsin Automated Machinery.

There is remaining soil and groundwater contamination related to all of these historic RECs; however, all of these activities have been given conditional closures or are being addressed during construction with the requirement of maintaining a cap over the Property. Redevelopment of these areas may involve additional sampling and soil remediation during the construction phase. The final cap will be the newly constructed building, parking area, and landscaping.

Liability Determination

Wisconsin statute, s. 292.11, commonly called the "Hazardous Substance Spills Law", requires those who cause, possess or control a hazardous substance discharge to "take the actions necessary to restore the environment to the extent practicable and minimize the harmful effects from the discharge to the air, lands or waters of this state." Wisconsin statute, s. 292.55, authorizes the Department to issue letters clarifying potential liability for environmental pollution.

- The data summarized in the above reports indicate that hazardous substances have been discharged at the Property, impacting both soil and groundwater. Petroleum, metals, and chlorinated solvent contaminants were identified in soil and groundwater above the acceptable standards and have been remediated to the extent practicable.
- Based on the information presented in the Analysis of Brownfield Cleanup Alternatives, Parcel H, September 30, 2009 and the subsequent October 2009 DNR approval, the Department will require additional actions at the Property to address the final construction work, associated remediation as necessary and final capping of the property.

Based on the Department's review of the Phase II ESA reports, it appears that the conditions described above are the only recognized environmental conditions (RECs) on the Property and there is no reason to suspect that other areas of the Property may be contaminated or that other contaminants may be present. During construction work, if any additional contamination is discovered, AECOM will sample and handle appropriately. Generally, the Phase II reports conducted at the Property appeared adequate and consistent with standard industry practices to identify and physically confirm the presence of any suspected contaminants.

Specific question regarding any future owner's and Lender's liability

In your application you asked for the following additional clarification:

"Please provide 'clarification' on the environmental liability associated with this property for the future owner (the developer) and the lending institute that will finance the building construction and final land purchase."

The Department understands that additional remedial work (while concurrent with the redevelopment) will be performed by the City of Oshkosh (the current owner). The City of Oshkosh has entered this Property as well as adjoining properties into the Voluntary Party Liability Exemption (VPLE) program, and when completed will be granted a Certificate of Completion.

VPLE is a process by which parties such as the City of Oshkosh can voluntarily conduct an environmental investigation and cleanup of a property and then receive limits on their future liability through the issuance of a Certificate of Completion.

Certificates of Completion are issued when the Department determines that all requirements in s. 292.15, Wis. Stats., and the NR 700 administrative rule series, have been met. The primary requirement is that the Department must determine that the property in the VPLE process, including any releases which have migrated off-site, has been satisfactorily restored to the extent practicable and the harmful effects from the discharge have been minimized. While the liability protections afforded to parties in the VPLE process do not apply until all the legal requirements to obtain a Certificate of Completion in s. 292.15(2), Wis. Stats., have been satisfied, the Department will not take any action to require the City or any other party (future owners, lenders, lessees, etc.) to conduct environmental activities at the Property as long as the City is making reasonable progress towards completion of the environmental cleanup.

The Certificate of Completion exempts parties from portions of Wisconsin's Hazardous Substance Discharge Law (the "Spill" law, s. 292.11, Wis. Stats.), and portions of the state solid waste and hazardous waste laws. With respect to federal liability, the Voluntary Party Liability Exemption does not exempt parties from any federal laws or regulations. However, the DNR and the Environmental Protection Agency (EPA) entered into a One Cleanup Program Memorandum of Agreement (MOA) to clarify the role of the federal cleanup programs in Wisconsin's voluntary cleanups. This MOA generally states that the federal cleanup programs (Superfund, RCRA, TSCA) will not take action at a property where the responsible or voluntary party is undertaking or has completed a cleanup in accordance with Wisconsin and federal laws.

Potential Future Owner Environmental Liability

When the Certificate of Completion is issued, it exempts the owner (and any future owners) of the Property from future liability under most provisions of Wisconsin's Hazardous Substance Discharge Law, as well as certain hazardous and solid waste laws. The certificate assures that no additional environmental work will be required of the party with respect to hazardous substance releases that occurred prior to the approval of the site investigation, even if in the future:

- environmental standards change;
- cleanup action fails; or
- the hazardous substance contamination that was the subject of the cleanup is discovered to be more extensive than originally thought.

If any discharges of hazardous substances occur on the property *after* the site investigation is approved by the DNR, those discharges would not be covered by the exemption. Any person who causes, controls or possesses future discharges would be responsible for taking appropriate actions under the Hazardous Substance Discharge Law and any other applicable law.

Potential Lender's Environmental Liability

Lenders that meet the conditions established in s. 292.21, Wis. Stats. are not responsible for complying with Wisconsin's Hazardous Substance Discharge Law (the "Spill" law, s. 292.11, Wis. Stats.). Wisconsin law provides lenders and representatives with a clear release from environmental liability under Wisconsin's hazardous substance discharge law, if they were involved in lending activities at a property contaminated by a hazardous substance discharge. Subject to certain limited conditions, lenders involved with a contaminated property cannot be held environmentally responsible for a property if the lender:

- engages in normal lending activities, such as executing mortgages, providing financial assistance, or advancing funds;
- acquires the property and conducts an environmental assessment;
- inspects the property before acquiring it;
- enforces a security interest in personal property or fixtures; or
- acts as a representative

These five situations are further explained in the enclosed fact sheet: "Fact Sheet #5: Environmental Liability Exemption for Lenders and Representatives (Publication # RR-508, July 2006)." At your Property, the Department cannot hold a lender responsible for environmental cleanup, except in the rare situation where the lender would directly or indirectly (i.e., through tortuous conduct) cause a discharge of a hazardous substance. Therefore, any lender engaged in normal lending activities with your Property or business could not be held liable under Wisconsin's Hazardous Substance Discharge law for the cost of investigating and cleaning up the Property. Your lender can also request a letter from the Department clarifying their liability.

Lenders who do have to foreclose on property have the ability to qualify for a lender liability exemption if they submit an environmental assessment to the Department within 180 days of acquiring the property. In order to be eligible for a lender liability exemption, a lender foreclosing on property with potential environmental contamination must comply with all the requirements of s. 292.21, Wis. Stats., which include but are not limited to:

- Notifying the Department of the contamination,
- Not intentionally exacerbating an existing environmental discharge or negligently causing a new discharge,
- Implementing an emergency response action if necessary, and
- Submitting a lender liability exemption assessment to Department. The assessment must be completed during the year preceding acquisition of the property, or within 90 days following acquisition.

The Bureau for Remediation and Redevelopment Tracking System (BRRTS) identification number for this activity is shown at the top of this letter. The Department tracks information on all determinations such as this in the BRRTS database that is available at <http://dnr.wi.gov/org/aw/rr/clean.htm>. The Contaminated Lands Environmental Action Network (CLEAN) is an inter-linked system providing information on land activities in Wisconsin, to assist with the investigation, cleanup and eventual re-use of those lands.

If you have any additional questions or further concerns, please feel free to contact me at (920) 662-5160 or the project manager, Kathy Sylvester at (920) 424-0399.

Sincerely,



Bruce G. Urben
Remediation and Redevelopment Team Supervisor
Northeast Region

Attach: Certified Survey Map #5840

Fact sheet #2 Pub #RR506, Voluntary Party Remediation and Exemption from Liability

Fact Sheet #5 Pub #RR508, Environmental Liability Exemptions for Lenders & Representatives

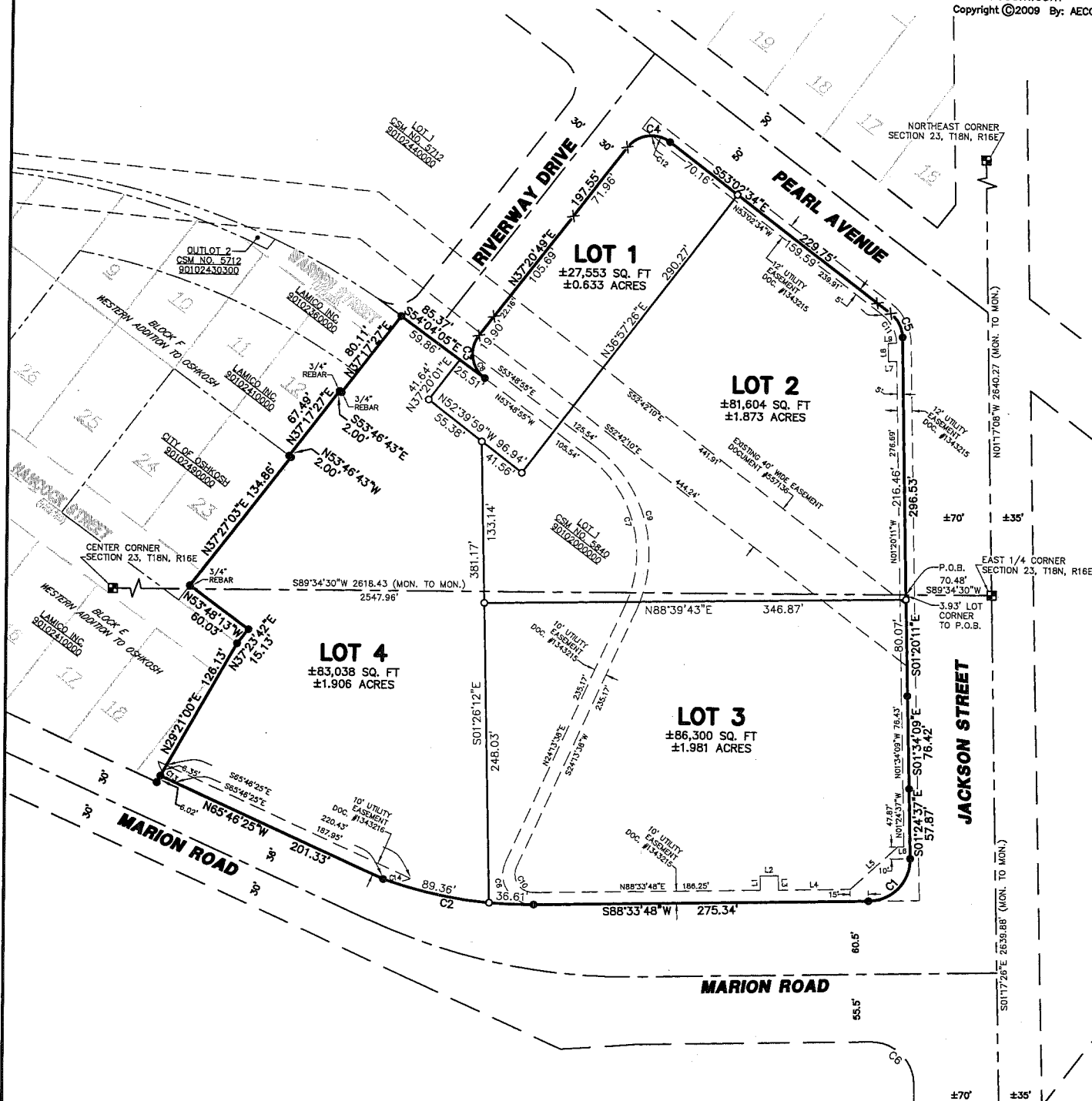
cc: Kathy Sylvester – Oshkosh
Paul Timm – AECOM (via email)
Darryn Burich – City of Oshkosh (via email)
Michael Prager – RR/5

CERTIFIED SURVEY MAP

ALL OF LOT 1 OF CERTIFIED SURVEY MAP NUMBER 5840,
BEING A PART OF THE SOUTHEAST ¼ OF THE NORTHEAST ¼ AND OF THE NORTHEAST ¼ OF THE SOUTHEAST ¼ OF
SECTION 23, TOWNSHIP 18 NORTH, RANGE 16 EAST, FIRST WARD, CITY OF OSHKOSH, WINNEBAGO COUNTY, WISCONSIN.

AECOM

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Green Bay, WI 54311
920.468.1978
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NOTES

SURVEYED FOR THE REDEVELOPMENT
AUTHORITY OF THE CITY OF OSHKOSH.

BEARING ARE REFERENCED TO GRID NORTH
OF THE WISCONSIN STATE PLANE
COORDINATE SYSTEM, SOUTH ZONE.

SUBJECT TO EASEMENTS OF RECORD.

CRAIG D. HANSEN S-2840
REGISTERED LAND SURVEYOR
SEPTEMBER 20, 2009

THIS IS AN ORIGINAL SURVEY
DOCUMENT IF THE PROFESSIONAL
SEAL IS IMPRINTED IN RED AND
SIGNED IN BLUE

SHEET	1 OF 3
PROJECT No.	12-30091
CADD FILE	G1230091-11-Lot 1-CSM
DRAWN BY	CDH
DATE DRAWN	9/28/09

—	CSM LOT BOUNDARY
- - -	SECTION LINE
- - -	EASEMENT LINE
- - -	RIGHT-OF-WAY CENTERLINE
- - -	RIGHT-OF-WAY LINE
- - -	VACATED ROAD RIGHT-OF-WAY LINE
- - -	VACATED ROAD CENTERLINE
- - -	EXISTING PARCEL LINE
●	FOUND 1" IRON PIPE (UNLESS NOTED)
○	SET 1" IRON PIPE
×	FOUND CHISELED CROSS
⊗	SET CHISELED CROSS

SCALE: 1" = 120'

CURVE TABLE				
CURVE	LENGTH	RADIUS	CHORD BEARING	CHORD LENGTH
C1	54.96'	35.00'	S43°34'36"W	49.49'
C2	125.97'	349.43'	N81°08'33"W	125.29'
C3	39.78'	25.00'	N08°14'04"W	35.71'
C4	39.10'	25.00'	N82°09'07"E	35.23'
C5	22.56'	25.00'	S27°11'23"E	21.50'
C6	50.42'	25.00'	N33°36'17"W	42.32'
C7	136.21'	100.00'	N14°47'38"W	125.02'
C8	23.18'	25.00'	N27°15'01"W	22.36'
C9	149.83'	110.00'	S14°47'38"E	138.51'
C10	30.28'	15.00'	S33°36'17"E	25.39'
C11	27.07'	30.00'	N27°11'22"W	28.16'
C12	16.09'	25.00'	N71°28'40"W	15.81'
C13	23.18'	25.00'	N32°12'31"W	22.36'
C14	23.18'	25.00'	S87°39'40"W	22.36'

LINE TABLE		
LINE	LENGTH	BEARING
L1	12.00'	N01°26'12"W
L2	15.00'	N88°33'48"E
L3	12.00'	S01°26'12"E
L4	59.09'	N88°33'48"E
L5	53.15'	N47°23'24"E
L6	5.00'	N88°35'23"E
L7	7.00'	S88°39'49"W
L8	15.00'	N01°20'11"W
L9	7.00'	N88°39'49"E

"THE INFORMATION SHOWN ON THIS DRAWING CONCERNING TYPE AND LOCATION OF UNDERGROUND UTILITIES IS NOT GUARANTEED TO BE ACCURATE OR ALL INCLUSIVE. THE CONTRACTOR IS RESPONSIBLE FOR MAKING HIS OWN DETERMINATIONS AS TO THE TYPE AND LOCATION OF UNDERGROUND UTILITIES AS MAY BE NECESSARY TO AVOID DAMAGE THERETO."

NOTE

ALL DIMENSIONS ARE SHOWN TO FACE OF CURB UNLESS OTHERWISE NOTED.



0 30
1" = 30'

LEGEND

PL	PROPERTY LINE
CAS	U.G. NATURAL GAS LINE
OH	OVERHEAD ELECTRIC LINE
ELEC	U.G. ELECTRIC LINE
PHON	U.G. TELEPHONE LINE
FIB	U.G. FIBER OPTIC LINE
ST	PAVEMENT CENTERLINE
SAW	U.G. SANITARY SEWER MAIN
ST	U.G. STORM MAIN
W	U.G. WATERMAIN
E	EASEMENT LINE
X	FENCE
S	MANHOLE SANITARY
ST	MANHOLE STORM
CB	CATCH BASIN
IN	INLET
U	U.G. WATER VALVE
EP	ELECTRICAL PEDESTAL
EU	MANHOLE ELECTRIC
EU	MANHOLE UNKNOWN
UG	UNDERGROUD GAS VALVE
FH	FIRE HYDRANT
LP	LIGHT POLE
PP	POWER POLE
MW	MONITORING WELL - EXISTING
SP	SIGN POST
TP	TELEPHONE PEDESTAL
W	MANHOLE WATER
WT	MANHOLE TELEPHONE
GP	GUARD POST/BOLLARD
GA	GUY ANCHOR
SE	SPOT ELEVATION
CP	EXISTING CONCRETE PAVEMENT
HP	PROPOSED HEAVY DUTY ASPHALT PAVEMENT (SEE SHEET C6.0)
HS	PROPOSED HIGH-SIDE CURB
LD	PROPOSED LAND DIVISION LINE



CALL DIGGERS HOTLINE
1-800-242-8511
TOLL FREE

WS STATUTE 182.0175(1874)

EXISTING SITE INFORMATION DATA	
DISTURBANCE AREA	= 195,585 SQ.FT. (4.49 Ac.)
GREENSPACE AREA	= 195,585 SQ.FT. (4.49 Ac.)

PROPOSED SITE INFORMATION DATA	
DISTURBANCE AREA	= 195,585 SQ.FT. (4.49 Ac.)
IMPERVIOUS AREA	= 168,560 SQ. FT. (3.64 Ac.)
GREENSPACE AREA	= 37,026 SQ.FT. (0.85 Ac.)

NOTES

SITE SURVEYED BY AECOM ON 6-15-09 AND 6-19-09.

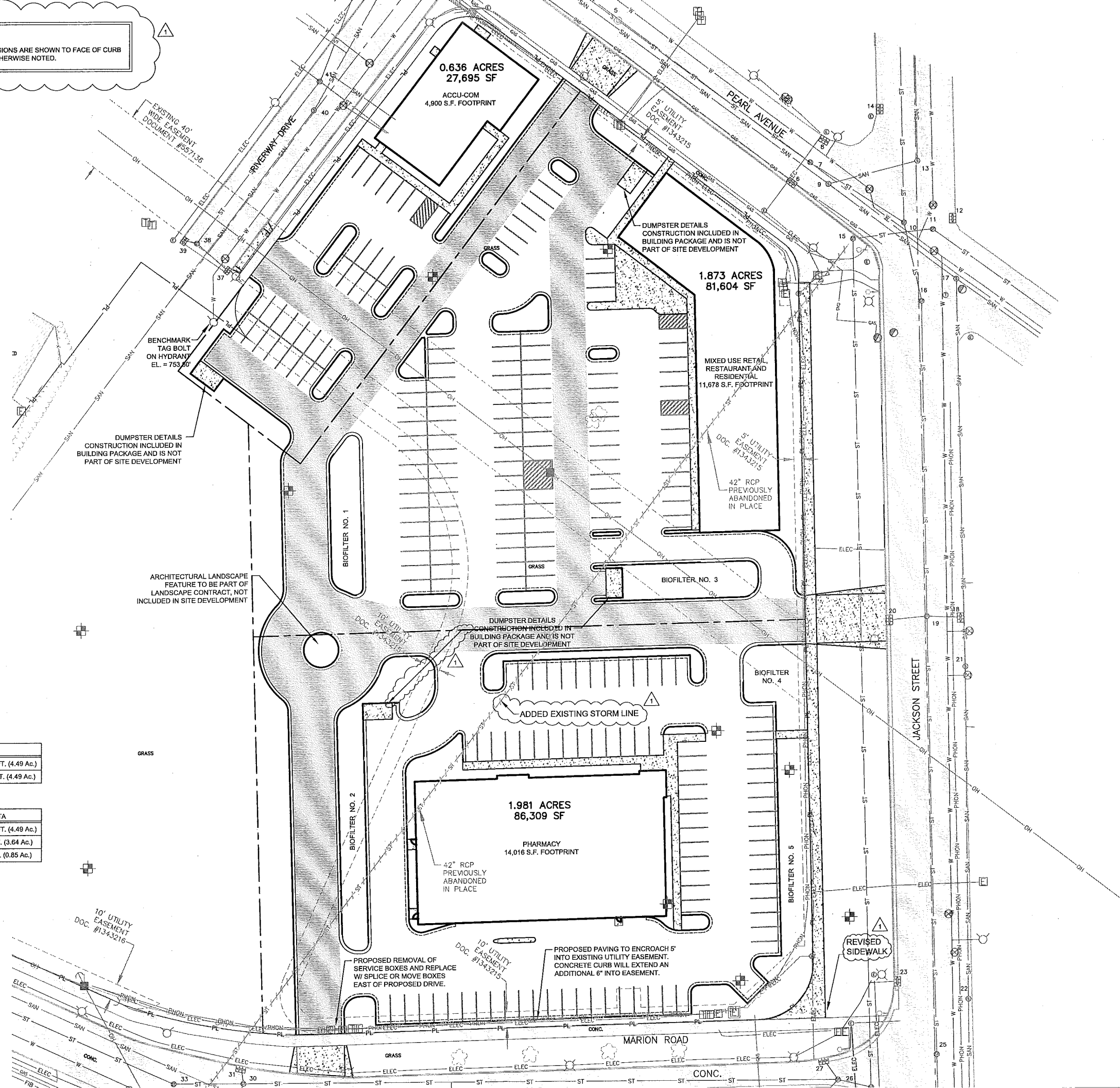
HORIZONTAL COORDINATES ARE REFERENCED TO THE WISCONSIN STATE PLANE COORDINATE SYSTEM, SOUTH ZONE.

ELEVATIONS ARE REFERENCED TO THE CITY OF OSHKOSH DATUM (NGVD29).

UNDERGROUND UTILITIES WERE SURVEYED AS MARKED BY DIGGERS HOTLINE PER TICKET NUMBER 20092411283.

THE CONTRACTOR/OWNER IS RESPONSIBLE FOR MAKING HIS/HER OWN DETERMINATION AS TO THE TYPE AND LOCATION OF UNDERGROUND UTILITIES THAT MAY BE NECESSARY TO AVOID DAMAGE THERETO. CONTRACTOR/OWNER SHALL BE RESPONSIBLE TO CONTACT DIGGER'S HOTLINE PRIOR TO START OF ANY CONSTRUCTION.

PPROPERTY AND EASEMENT LINES SHOWN ARE PER WINNEBAGO COUNTY CERTIFIED SURVEY MAP NUMBER 5840.



AECOM

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Oshkosh, WI 54901

920.235.0270

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MASTER SITE LAYOUT & PAVING PLAN MARION/PEARL PHASE II SITE DEVELOPMENT INTERSECTION OF MARION ROAD AND JACKSON STREET OSHKOSH, WISCONSIN

Issued

Rev. Date
Description

9/24/2009
Issued for Construction

Designed: REO 9/10/2009
Drawn: REO 9/10/2009
Checked: CXM 9/10/2009
Approved:

PROJECT NUMBER
60101542

SHEET REFERENCE NUMBER

C2.0